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09/654,339	09/08/2000	Mark E. Ogram	1475B.5A.5	8051

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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 11/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliant Appeal Brief
(37 CFR 41.37)**

Application No.

09/654,339

Applicant(s)

OGRAM, MARK E.

Examiner

Dennis Ruhl

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 19 October 2005 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file a complete new brief in compliance with 37 CFR 41.37 within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☒ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed or confirmed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☒ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☒ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

see attachment.


DENNIS RUHL
PRIMARY EXAMINER

With respect to the "Summary of the Invention" section in the Appeal Brief, this is not the proper section heading. It must be labeled as "Summary of the claimed subject matter". Also, applicant has failed to provide a concise explanation of each independent claim. Independent claims 1,6, and 11 each must have their own concise explanation of the claimed subject matter. The summary applicant has provided is for the disclosed invention and not the claims. The listing of the claims does not constitute a concise explanation of the subject matter claimed by each independent claim and each dependent claim argued separately.

The various sections required in the Brief are not in the proper order as is required by 37 CFR 41.37.

The section "ISSUES" is no longer a section that is supposed to be in an Appeal Brief as it has been replaced by the section "Grounds of rejection to be reviewed on appeal". Applicant has failed to provide this section of the Brief. The examiner also notes that there is no mention of the 112,1st paragraph rejections for new matter and lack of enablement. Is applicant intending to have this Appeal also decide this issue? If so it must be addressed by applicant as being an issue for appeal and an argument must be presented.

The examiner also notes that applicant has failed to mention the other pending cases that are related to this application that have had appeal briefs filed as of the date of this correspondence. While this does not render the brief defective the examiner wanted to point this fact out to applicant. The examiner will inform the board of the

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other related cases in the event applicant does not amend this section to reflect the other related pending cases that are also apparently going up on appeal.

The claims appendix must be labeled properly and cannot be called "Appendix 2". The headings set forth in 37 CFR 41.37 must be adhered to.



DENNIS RUHL
PRIMARY EXAMINER